

MINUTES  
MALIBU CITY COUNCIL  
REGULAR MEETING  
JANUARY 22, 2001  
HUGHES AUDITORIUM  
6:30 P.M.

**CLOSED SESSION**

At 4:30 p.m., the regular meeting of the Malibu City Council convened. City Attorney Amerikaner announced that the purpose of the Closed Session was to discuss matters listed on the posted agenda pursuant to Government Code Sections 54956.9(a) and 54957 . The City Council recessed to a closed session.

**CALL TO ORDER**

Mayor Hasse reconvened the meeting at 6:37 p.m.

**ROLL CALL**

The following persons were recorded in attendance by the Recording Secretary:

PRESENT: Mayor Thomas Hasse, Councilmembers Sharon Barovsky, Joan House, Jeffrey Jennings, and Ken Kearsley.

ALSO PRESENT: Christi Hogin, Interim City Manager; Steve Amerikaner, City Attorney; Victor Peterson, Building Official; Barry Hogan, Planning Director; Julia James, Administrative Services Director; Paul Adams, Parks and Recreation Director; Chuck Bergson, Public Works Director; Glen Michitsch, Assistant Planner; Pete Lippman, City Treasurer; Captain John O'Brien; Lt. Tom Bradstock, Sheriff's Department; and Lisa Pope, Recording Secretary.

**FLAG SALUTE**

Planning Director Hogan led the Pledge of Allegiance.

**CLOSED SESSION REPORT**

City Attorney Amerikaner announced that the Council met in Closed Session at 4:30 p.m. for the purpose of discussing matters listed on the posted closed session agenda as follows:

**Existing litigation per Government Code Section 54956.9 (a):**

1. The Kissel Company, Inc. v. The City of Malibu, et al. Los Angeles County Superior Court Case No. SS008111

2. Gibbs v. City of Malibu Los Angeles County Superior Court Case No. BC059362
3. Hoffman v. City of Malibu Los Angeles County Superior Court Case No. SC061012

**Personnel matters pursuant to Government Code section 54957:**

4. Public Employee Performance Evaluation  
Title: City Attorney

City Attorney Amerikaner reported that the Council met in closed session, completed Item No. 4, and postponed Item Nos. 1, 2, and 3. He stated the Council approved by 4/5th vote to add an item to the agenda regarding threatened litigation against the City pursuant to Government Code Section 54956.9C.

**APPROVAL OF AGENDA**

**MOTION** Councilmember Jennings moved and Councilmember Kearsley seconded a motion to approve the agenda as posted. The motion carried unanimously.

**REPORT ON POSTING OF AGENDA**

Interim City Manager Hogin reported that the agenda for the meeting was posted on January 12, 2001.

**ITEM 1 CEREMONIAL/PRESENTATIONS**

- A. Administration of Oath of Office for City Parks & Recreation Commissioner Rosenthal

City Attorney Amerikaner administered the Oath of Office for City Parks & Recreation Commissioner Rosenthal.

- B. Presentation by Captain John O'Brien on Re-establishing the Sheriff's Station in Malibu

Captain O'Brien provided an overview on re-establishing the Sheriff's Station in Malibu and explained that the Sheriff's Department would co-locate with City Hall. He read a component included in Sheriff Baca's 30 Year Plan regarding

facilities.

C. Presentation by Mark Olson of Southern California Edison on Energy Shortages

Mark Olson, Southern California Edison, explained generation ownership, load growth versus new generation, ISO operations, rolling blackouts, energy costs, and impacts on service.

Mayor Pro Tem House asked the difference between rolling blackouts and brown outs. Mr. Olson explained that brown outs were not conducted in California due to potential equipment damage. He discussed delays in repair completions due to limited overtime expenses. Mayor Pro Tem House asked for advice on how to conserve electricity. Mr. Olson explained peak hours and suggested conservation occur during those hours. He explained the 15% discount program for low income residents. He stated the State would be reviewing energy efficiency programs. Mayor Pro Tem House asked how residents could secure electricity for health needs. Mr. Olson explained that rolling blackouts would only last for 1 to 2 hours, and suggested those with energy critical items utilize battery power or a generator.

Councilmember Kearsley asked if there was danger of a surge spike after a rolling blackout. Mr. Olson stated that was not a concern.

Mayor Hasse thanked Mr. Olson and commended him for his service to the City.

**ITEM 2      A.    PUBLIC COMMENTS**

Mike Jordan, Santa Monica - Malibu Unified School District Board of Education, discussed the Board's commitment to partnership. He reaffirmed the sense of collaboration, responsibility and accountability. He discussed the financial oversight committee.

Laure Stern, Malibu Foundation for Youth and Families / Malibu Youth Coalition, thanked the Council and City for supporting the Youth Coalition. She discussed the success of the Teen Center. She announced [Malibuyouth.org](http://Malibuyouth.org), a community website listing community events.

Stacey Gray, Boys and Girls Club, thanked the Council for recognizing the need for a teen center in Malibu. She discussed efforts with the schools to assist in areas of

need. She discussed club activities and events.

Kate Ross, Executive Vice President of Malibu PTA / Malibu Youth Coalition, indicated they would like to be a resource for the City. She discussed the need for funding for schools and stated they would like to partner with the City to find permanent revenues for the School District.

Kathy Wisnicki, PTA President at Point Dume and Malibu Youth Coalition member, stated the schools in Malibu were excellent. She discussed the need to create a partnership between the City, School District and PTA's. She thanked the City for funding youth activities in the City. She suggested a task force be created to find a revenue stream for education. She encouraged the Council to use the Coalition as a resource.

Patt Healy, Malibu Coalition for Slow Growth, discussed points she had raised at the previous Council meeting regarding Civic Center development.

Alanna Tarrington, Malibu Film Festival, announced the festival that would occur February 23 - February 25. She stated a portion of the revenues would go towards public schools in Malibu. She announced some of the lifetime achievement awards that would be presented.

Deirdre Roney, Malibu Youth Coalition / Webster Elementary PTA President, presented a resolution to the Council regarding the formation of a task force for the City of Malibu and City of Santa Monica, School Board and PTA's to work together. She discussed the need to come up with a plan for education.

## **B. COUNCIL COMMENTS**

Councilmember Barovsky welcomed Ms. Rosenthal to the Parks & Recreation Commission. She welcomed the Sheriff's Department back to the City. She stated she was impressed by those representing the schools of Malibu. She stated she had received Ralph Waycott's resignation from the Trails Commission and thanked him for his work.

Councilmember Kearsley thanked Ms. Stern for the development of the Boys and Girls Club. He congratulated Mike Jordan on his appointment to the Board of Education. He volunteered to be the point person on the Council for the PTA Presidents to contact. He welcomed the Sheriff's Department back to the City.

Councilmember Jennings congratulated Ms. Rosenthal on her appointment to the Parks and Recreation Commission. He welcomed the Sheriff's Department back to Malibu. He suggested the Council reactivate a Council Education Subcommittee. He suggested the Malibu Film Festival look into high school students submitting films.

Mayor Pro Tem House congratulated Ms. Rosenthal. She stated the community would be happy to have the Sheriff's Department back. She suggested the Youth Commission meet with the Youth Coalition. She congratulated the Youth Coalition on their work and efforts. She indicated support for resurrecting the Council Education Subcommittee.

Mayor Hasse congratulated Commissioner Rosenthal on her appointment to the Parks and Recreation Commission. He discussed the recent Legislative Conference in Sacramento which he, Mayor Pro Tem House, and Councilmember Barovsky attended. He announced that Senator Kuehl and State Parks and Recreation agreed with the proposed tertiary treatment for the Pier. He thanked Laure Stern and the Youth Coalition for their work. He stated he and Mayor Pro Tem House met with School Board members to discuss issues with the School District. He congratulated the Film Festival. He concurred with having a future agenda item to resurrect the Council Education Subcommittee.

### **ITEM 3      CONSENT CALENDAR**

**MOTION**      Councilmember Kearsley moved and Councilmember Jennings seconded a motion to approve Items 3.B.1., 3.B.2., 3.B.3., 3.B.4., 3.B.5. and 3.B.6., under the Consent Calendar. Motion passed unanimously.

The consent calendar consisted of the following items:

- A.    Previously Discussed Items  
      None.
- B.    New Items
  - 1.    Waive further reading  
      Staff recommendation: After the City Attorney has read the title, waive full reading of ordinances considered on this agenda for introduction on first reading and/or second reading and adoption.
  - 2.    Approve warrants  
      Staff recommendation: To allow and approve warrant demand numbers 15741 through 15794 from the General Fund and direct the City Treasurer to pay out the funds to each of the claimants listed in Warrant Register No.

224 in the amount of the warrant appearing opposite their names, for the purposes stated on the respective demands, making a total of \$209,474.18.

3. Approval of Minutes

Staff recommendation: Approve minutes of December 5, 2000 Special City Council and December 11, 2000 Regular City Council meetings.

4. Adopt Resolution No. 01-01 "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU AMENDING THE INVESTMENT POLICY AND DELEGATING INVESTMENT RESPONSIBILITY TO THE CITY TREASURER"

Staff recommendation: Review and adopt the Statement of Investment Policy for calendar year 2001, and delegate to the City Treasurer the responsibility and authority for investing surplus City funds for a one-year period by adopting Resolution No. 01-01.

5. Acceptance of Donation for a T-Ball

Staff recommendation: Accept donation in the amount of \$1,500 from the Malibu Kiwanis for the purpose of providing scholarships and equipment for the 2001 T-Ball program.

6. Completion of Contract and Acceptance of Electric Vehicle Charging Station CIP 00-09

Staff recommendation: Accept the work performed by Building Energy Consultants on the Electric Vehicle (EV) Charging Station project (cip 00-09) as complete and release all surety agreements and bonds.

#### **ITEM 4 ORDINANCES AND PUBLIC HEARINGS**

A. Appeal of the Planning Commission's Action Approving Site Plan Review No. 99-037 to Exceed the Maximum Structure Height of 18 Feet, But Not to Exceed 28 Feet at 27061 Sea Vista Drive (Chicksands Properties)

Staff recommendation: Adopt City Council Resolution No. 00-064(A) denying the appeal and approving Plot Plan Review No. 00-091 and Site Plan Review No. 99-037, and adopt City Council Resolution No. 00-064(B) denying the appeal request and approving Variance No. 99-018.

Associate Planner Michitsch presented the staff report.

Richard D. Buckley, Jr., attorney representing Chicksands, discussed the height of the building and agreed with staff's finding that 28-feet was in character with the neighborhood standards. He stated the additional concerns expressed by the neighboring resident would be addressed by the conditions. He discussed a

proposal letter received from the proponents dated January 21, 2001.

Paul Bazerkanian, representing the applicant, stated they had reviewed the neighborhood which contained houses up to and over 28-feet. He explained that the original application was over 32-feet. He stated they had meet with the neighbors to address their concerns. He deferred the remainder of his time to Mr. Buckley.

Mr. Buckley stated they had complied with the law and urged the Council to approve the appeal.

Eugene A. Kearin, representing the applicant, concurred with the comments made by the previous speakers.

Edward Lipnick, Planning Commission Chair, reviewed the discussion of the Planning Commission on the matter. He discussed the conditions attached to the approval by the Planning Commission. He discussed the need for a slope density formula and to address the problems of mansionization.

Rey Cano displayed the south elevation that would be looking onto his property. He discussed the definition of neighborhood character and indicated it was wrong to include any homes on Sea Vista Drive East in the review. He stated there were no homes on his street close to the height of the proposed project. He stated the area indicated as a basement were garages. He stated the 37-foot tall mansion did not fit within the neighborhood character.

Mayor Hasse stated he visited the site. Mayor Pro Tem House stated she visited the site and met with Mr. Cano. Councilmember Jennings stated he visited the site and walked the entire neighborhood. Councilmember Kearsley stated he visited the site and spoke with the applicant.

Mayor Pro Tem House asked what the Council could discuss. City Attorney Amerikaner explained that the matter was de novo and indicated the issues that could be discussed by the Council.

Councilmember Jennings stated the issue was height. He asked if the house met the 2/3 Rule. Associate Planner Michitsch stated the proposed structure was within the 2/3 Rule.

Mayor Pro Tem House discussed the definition of basement. Associate Planner Michitsch explained the definition of basement.

Councilmember Barovsky asked if the basement would be utilized for parking of cars. Associate Planner Michitsch explained that the ground floor qualified as a basement and garage. Councilmember Barovsky asked if joint basements and garages had previously been approved. Associate Planner Michitsch stated there had been other applications approved. He stated basements were not considered stories.

Councilmember Kearsley explained how the Code allowed the garage to qualify as a basement.

Mayor Pro Tem House discussed the Council's discussion of a project on Zumirez which was conditioned to reduce the door widths to not allow parking of automobiles. She requested clarification on the definition of basement and grade.

Councilmember Jennings requested specific direction from the City Attorney. He stated it was his understanding that the issue before the Council was on whether the change in height from 18-feet to 28-feet impacted the neighborhood. City Attorney Amerikaner referenced the appeal letter indicating the grounds for appeal was based on neighborhood character.

Councilmember Kearsley asked the definition of a story. Associate Planner Michitsch read the definition of "story." Councilmember Kearsley stated he would construe that the basement was a story.

Councilmember Barovsky asked whether the ground floor would be counted in the height of the structure if it was considered a basement. Councilmember Jennings stated the height calculation was determined by Planning staff. He stated the Council had to look at whether the height of the structure impacted neighborhood character. Associate Planner Michitsch indicated neighborhood character was not defined in the Code.

Councilmember Kearsley explained that the City was founded on part to maintain local neighborhoods. He agreed that the Council had to determine whether the house should be 18 or 28-feet. He discussed the two neighborhoods in the area, East Sea Vista and West Sea Vista and the definition of



neighborhood. He stated his findings were based on the West Sea Vista neighborhood. He stated the project would be 37-feet high. He stated there were no other buildings in West Sea Vista that were as tall as the proposed project. He stated the building was not within the neighborhood character. He stated he could not make the findings for the request by the applicant to increase from 18 to 28-feet. He read Land Use Objective 2.3.

Councilmember Jennings stated his initial reaction before going to the site was negative but the site was unusual. He stated it was necessary to make a finding that the structure would not adversely impact neighborhood character. He stated existing trees on Mr. Cano's property blocked the view of the project. He stated the house was too bulky but he was constrained to make a determination as to whether the project would affect the neighborhood. He stated the project could be adequately screened by vegetation. He suggested a performance standard be required in addition to a landscaping plan, to ensure mature plants be installed. He stated he would reluctantly vote to support the project.

Councilmember Barovsky stated she was troubled by the loop hole in basements allowing garage use. She stated the project was not within the neighborhood character. She stated she could not support the project.

Mayor Pro Tem House discussed the differences between Sea Vista West and Sea Vista East. She stated she would support the appellant and not support the project.

Mayor Hasse stated he had hoped that the two parties could have worked out a compromise. He stated his reading of the law led him to concur with Councilmember Jennings. He stated the area had organized itself as the Sycamore Park Meadows Association. He concluded that two story homes would not adversely impact the neighborhood. He stated he did not consider the basement as a story based on the vague definition in Code. He stated the law led him to approve the project.

Councilmember Barovsky stated it was necessary to make a judgement call on the law.

**MOTION** Councilmember Kearsley moved and Mayor Pro Tem House seconded a motion to uphold the appeal and direct staff to bring back a resolution consistent with the deliberation. The question was called and the motion carried 3-2, Councilmember Jennings and Mayor Hasse dissenting.

RECESS Mayor Hasse called a recess at 8:50 p.m. The meeting reconvened at 9:05 p.m. with all Councilmembers present.

- B. Public Hearing on General Plan Housing Element Update  
Staff recommendation: Continue the public hearing to the February 12, 2001 City Council meeting.

Planning Director Hogan presented the staff report.

By acclamation, the Council continued the hearing to February 12, 2001.

## **ITEM 5 OLD BUSINESS**

- A. Appointment by Mayor Pro Tem House to the Public Works Commission  
Staff recommendation: Mayor Pro Tem House to make appointment and direct staff to place new commissioner's swearing-in at next regular meeting.

Mayor Pro Tem House appointed William Stump to the Public Works Commission.

- B. Cross Creek Road Redesign CIP 00-12 Award of Contract  
Staff recommendation: Award consultant contract to Withers, Sandgren & Smith in the amount of \$89,224.00 for design of improvements to Cross Creek Road. Authorize the expenditure of not more than \$93,685.20 (contract amount plus 5% for reimbursable expenses).

Public Works Director Bergson presented the staff report.

Councilmember Jennings stated an architect had suggested pushing the participation of the property owners to tie the area together. Public Works Director Bergson concurred.

Mayor Pro Tem House asked how many colored alternative conceptual designs would be provided. Public Works Director Bergson anticipated at least 2, possibly 3 or 4. Mayor Pro Tem House asked if deco asphalt would be considered. Public Works Director Bergson stated similar materials were presented. Mayor Pro Tem House asked if the consultant would provide assistance during construction. Public Works Director Bergson stated it could be done in-house with assistance from the architect. Mayor Pro Tem House stated the cost was higher than anticipated.

**MOTION** Councilmember Jennings moved and Councilmember Kearsley seconded a motion to award consultant contract to Withers, Sandgren & Smith in the amount of \$89,224.00 for design of improvements to Cross Creek Road. Authorize the expenditure of not more than \$93,685.20 (contract amount plus 5% for reimbursable expenses). The motion carried unanimously.

**ITEM 6 NEW BUSINESS**

- A. Introduction of Ordinance No. 219 “AN ORDINANCE OF THE CITY OF MALIBU AMENDING THE STORM WATER AND URBAN RUNOFF POLLUTION CONTROL ORDINANCE TO PROVIDE STORM WATER POLLUTION CONTROL FOR PLANNING AND CONSTRUCTION OF NEW DEVELOPMENT AND REDEVELOPMENT PROJECTS AND AMENDING THE MALIBU MUNICIPAL CODE”

Staff recommendation: Conduct Public Hearing and introduce on first reading Ordinance No. 219 amending the Municipal Code Adopting Standard Urban Storm Water Mitigation Plan (SUSMP) requirements to provide new Storm Water Pollution Control Measures for New Development and Redevelopment Projects.

Public Works Director Bergson presented the staff report.

Jay Liebig stated he had reviewed the draft and questioned whether it would be applicable to the proposed development in the Civic Center. He stated it appeared that the Chili Cookoff site would be subject to the requirements. He questioned whether better water quality would result.

Councilmember Jennings questioned how the ordinance would apply to single-family hillside residences. Public Works Director Bergson explained how slope was calculated. Councilmember Jennings asked if the requirements applied exclusively to the construction phase of hillside homes. Public Works Director Bergson explained that both construction and occupancy must meet the requirements. Councilmember Jennings stated the impact of the requirements on a home constructed on 25% slope was unknown. Public Works Director Bergson stated the County had a publication suggesting landscaping and other means of meeting the requirements.

Mayor Pro Tem House asked the concerns of the Public Works Commission. Public Works Director Bergson explained that they were concerned with the impact on single family residences and suggested establishment of figures on

quantity and quality of storm flows.

Councilmember Barovsky requested an explanation on the rationale for some commercial properties being exempt. Public Works Director Bergson stated he did not know but would pursue the matter.

MOTION Mayor Pro Tem House moved and Councilmember Kearsley seconded a motion to introduce on first reading Ordinance No. 219 amending the Municipal Code Adopting Standard Urban Storm Water Mitigation Plan (SUSMP) requirements to provide new Storm Water Pollution Control Measures for New Development and Redevelopment Projects. The motion carried unanimously.

B. Cliffside Drive Parking Improvements (CIP #00-11) Award of Construction Contract

Staff recommendation: 1) Award a contract to Burns-Pacific Construction, Inc. of Thousand Oaks, California in the amount of \$198,567.00 for construction of the Cliffside Drive parking improvements; and 2) Authorize the expenditure of not more than \$218,423.70 (contract amount plus 10%).

Public Works Director Bergson presented the staff report.

Interim City Manager Hogin explained the settlement agreement with the Coastal Commission. She stated the Coastal Commission was prepared to fund \$100,000 of the project. Councilmember Barovsky asked if the matter could be approved based on obtaining assurance from Coastal Commission in writing.

Mayor Pro Tem House asked if State Parks was committed. Interim City Manager Hogin stated State Parks was committed.

MOTION Councilmember Kearsley moved and Councilmember Jennings seconded a motion to 1) Award a contract to Burns-Pacific Construction, Inc. of Thousand Oaks, California in the amount of \$198,567.00 for construction of the Cliffside Drive parking improvements; and 2) Authorize the expenditure of not more than \$218,423.70 (contract amount plus 10%).

AMENDMENT

Councilmember Jennings suggested an amendment that the matter be conditionally approved upon Coastal Commission's commitment to fund \$100,000. Councilmember Kearsley accepted the amendment.

The amended motion carried unanimously.

- C. Procedure for Submitting a Bond Measure to the Voters  
Staff recommendation: Receive and file report.

City Attorney Amerikaner presented the staff report.

MOTION Councilmember Jennings moved and Councilmember Kearsley seconded a motion to receive and file the report.

Mayor Pro Tem House requested information on what aspects City Treasurer Lippman could do in-house.

Councilmember Barovsky stated she did not see the need for an Election Consultant.

The motion carried unanimously.

- D. Approval in Concept of Certain Grants  
Recommendation: Approve the following grant applications in concept and direct the City Manager to execute the necessary application documents prepared by the Grants Consultant consistent with this approval-in-concept:

Grant A) Storm drain Filtration & Disinfection Systems - Cross Creek Drain  
Proposition 13 - Coastal Nonpoint Source Control Program  
MTA - TEA 21 - Highway Pollution Mitigation

Grant B) Storm drain Filtration & Disinfection Systems - Civic Center Drain  
Proposition 13 - Watershed Protection Program

Grant C) PCH Median Retrofit and Flood Control - Webb Way to Malibu Canyon  
Proposition 13 - Coastal Nonpoint Source Control Program  
MTA - TEA 21 - Highway Pollution Mitigation

Grant D) Point Dume CNG Van & Zumirez Mini-Transit Center  
MTA - Transit Capital

Grant E) Las Flores Creek Park - Streambank Stabilization & Creek Restoration  
Proposition 13 - Watershed Protection Program

Grants Coordinator Cameron presented the staff report.

Margaret Michon-Rollem addressed the Council in support of Grant D - Point Dume Shuttle (Compressed Natural Gas Van).

Councilmember Barovsky stated the shuttle program would be pushed. She asked if the Blue Ribbon Committee was meeting. Grants Coordinator Cameron stated the committee was not yet set up but she had been working with Point Dume residents. Councilmember Barovsky commended Ms. Cameron for her work.

Councilmember Kearsley indicated support for the shuttle program.

Mayor Hasse asked if Propositions 12 and 13 had been reviewed in terms of monies available for Malibu. Grants Coordinator Cameron discussed the shuttle grant and indicated she and Public Works Director Bergson would address the Point Dume HOA. She discussed other MTA grants that the City would be applying for. Mayor Hasse asked if the storm sceptor was functioning. Public Works Director Bergson stated it was not yet functioning. Grants Coordinator Cameron discussed the Land and Water Conservation fund and Propositions 12 and 13.

**MOTION** Councilmember Barovsky moved and Councilmember Jennings seconded a motion to approve the grant applications in concept and direct the City Manager to execute the necessary application documents prepared by the Grants Consultant consistent with this approval-in-concept, with priority placed on the Point Dume Shuttle over the Mini-Transit Center. The motion carried unanimously.

**ADJOURN** At 9:45 p.m., Mayor Pro Tem House moved and Councilmember Jennings seconded a motion to adjourn. The motion carried unanimously.

Approved and adopted by the City Council of the  
City of Malibu on February 26, 2001.

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MAYOR THOMAS HASSE

ATTEST:

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VIRGINIA BLOOM, City Clerk  
(seal)

PREPARED BY:

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LISA POPE, Recording Secretary